APPEAL NO. 160935
FILED JULY 12, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on April 14, 2016, in Austin, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to cervical radiculopathy, a sacroiliac sprain/strain, degenerative changes of the spine, cervical spondylosis or post-concussion syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 31, 2015; and (3) the claimant's impairment rating (IR) is 10%.

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury as well as MMI and IR. The claimant argues in part that the weight of the evidence indicates that the compensable injury included, at minimum, headaches caused by post-concussion syndrome. We note that the extent-of-injury issue before the hearing officer to resolve included post-concussion syndrome rather than headaches. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

It was undisputed that the claimant sustained a compensable injury on (date of injury). The claimant testified he sustained injuries when he was hit by a shelving unit while remodeling a building.

**EXTENT OF INJURY**

That portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to cervical radiculopathy, degenerative changes of the spine, cervical spondylosis, or post-concussion syndrome is supported by sufficient evidence and is affirmed.

At issue was also whether the compensable injury of (date of injury), includes a sacroiliac sprain/strain. In her discussion the hearing officer stated that in this case the disputed conditions/diagnoses require expert evidence to establish a causal connection with the compensable injury.

The Texas courts have long established the general rule that "expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience" of the fact finder. *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). The Appeals Panel has previously held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision (APD) 022301, decided October 23, 2002. *See also City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara*.

However, where the subject is one where the fact finder has the ability from common knowledge to find a causal connection, expert evidence is not required to establish causation. *See* APD 120383, decided April 20, 2012, where the Appeals Panel rejected the contention that a cervical strain requires expert medical evidence; APD 992946, decided February 14, 2000, where the Appeals Panel declined to hold expert medical evidence was required to prove a shoulder strain; and APD 952129, decided January 31, 1996, where the Appeals Panel declined to hold expert medical evidence was required to prove a back strain. *See also* APD 130808, decided May 20, 2013, where the Appeals Panel held that Grade II cervical sprain/strain and Grade II lumbar sprain/strain do not require expert medical evidence. *See also* APD 130915, decided May 20, 2013, and APD 141478, decided September 11, 2014.

The hearing officer is requiring expert evidence of causation with regard to the sacroiliac sprain/strain to establish causation. Although the hearing officer could accept or reject in whole or in part the claimant's testimony or other evidence, the hearing officer is requiring a higher standard than is required under the law, as cited in this decision, to establish causation. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of (date of injury), does not extend to a sacroiliac sprain/strain and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

**MMI/IR**

Given that we have reversed a portion of the hearing officer's extent-of-injury determination and remanded that issue to the hearing officer to make a determination consistent with this decision, we reverse the hearing officer's determinations that the claimant reached MMI on March 31, 2015, and that the claimant's IR is 10%, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

**SUMMARY**

We affirm that portion of the hearing officer's extent-of-injury determination that the compensable injury of (date of injury), does not extend to cervical radiculopathy, degenerative changes of the spine, cervical spondylosis, or post-concussion syndrome.

We reverse the hearing officer's determination that the compensable injury of (date of injury), does not extend to a sacroiliac sprain/strain and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on March 31, 2015, and the claimant's IR is 10%, and we remand the issues of MMI/IR to the hearing officer to make a determination consistent with this decision.

## REMAND INSTRUCTIONS

On remand the hearing officer should analyze the evidence in the record using the correct standard to determine whether or not the claimant met her burden of proof to establish causation for the condition of sacroiliac sprain/strain.

The hearing officer is to make a finding on the date of statutory MMI or have the parties agree or stipulate to the date of statutory MMI. The hearing officer is to advise the designated doctor the date of statutory MMI.

(Dr. O) is the designated doctor. The hearing officer is to determine whether Dr. O is still qualified and available to be the designated doctor. If Dr. O is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Texas Department of Insurance, Division of Workers' Compensation (Division) rules to determine MMI, which cannot be later than the statutory date of MMI (*see* Section 401.011(30)), and the IR.

The hearing officer is to inform the designated doctor of the conditions that are part of the compensable injury of (date of injury), as stipulated to by the parties. The hearing officer is to inform the designated doctor that the compensable injury of (date of injury), does not include cervical radiculopathy, degenerative changes of the spine, cervical spondylosis, or post-concussion syndrome.

The hearing officer is to request from the designated doctor a certification of MMI and IR on the compensable injury and an alternate certification of MMI/IR on the compensable injury and the disputed extent-of-injury condition of sacroiliac sprain/strain. The certification of MMI can be no later than the statutory date of MMI. The hearing officer is to ensure that the designated doctor has all the pertinent medical records to determine MMI and IR. The parties are to be provided with the hearing

officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, MMI, and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT**
**6210 EAST HIGHWAY 290**
**AUSTIN, TEXAS 78723**.

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge